

**HOTELS, RESTAURANTS, ALCOHOLIC BEVERAGES AND
TOBACCO**

CS/HB 1941 — Cigarettes

by Governmental Operations Committee, Rep. Albright and others (CS/SB 1526 by Regulated Industries Committee and Senators Dyer and King)

The bill prohibits:

- selling or distributing cigarettes that were imported in violation of federal law or packaged in a way that indicates the manufacturer did not intend for them to be sold in the United States;
- importing such cigarettes;
- possessing such cigarettes for purpose of sale;
- altering packages of such cigarettes; or,
- placing a tax stamp on an unlawful or altered package of cigarettes.

The bill establishes criminal, administrative, and civil remedies and penalties. The bill broadens the definition of “cigarette,” for purposes of the new prohibitions, to include “bidis” and similar products. The bill requires the Division of Alcoholic Beverages and Tobacco to design cigarette tax stamps and maintain records in a way that permits identification of the agent or wholesale dealer that affixed the stamp to a particular pack of cigarettes.

If approved by the Governor, these provisions take effect October 1, 2000.

Vote: Senate 37-0; House 113-2

CS/HB 2281 — Department of Business and Professional Regulation

by Regulated Services Committee, Rep. Bitner and others (CS/SB 2542 by Regulated Industries Committee and Senator King)

The bill:

- Requires the Division of Hotels and Restaurants to adopt a rule providing for a food safety training certificate program to be administered by a private nonprofit provider under a contract with the Division of Hotels and Restaurants.
- Defines who may be an applicant for an alcoholic beverage license and revises the requirements as to information provided on applications.

- Increases the liquor license quota population requirement from one license per each 5,000 residents of a county to one license per each 7,500 residents.
- Creates a new special liquor license for caterers and authorizes vendors holding quota licenses to sell alcoholic beverages for on-premises consumption at a catered event.
- Provides that the first \$300,000 collected in caterer license fees will be deposited in the Department of Children and Family Services' Operations and Maintenance Trust Fund.
- Provides that if the Department of Business and Professional Regulation issues a notice of intent to deny an alcoholic beverage license for failure of the applicant to disclose information relating to prior convictions, the temporary license expires and is not extended during any proceedings relating to the denial.
- Provides for revocation or suspension of a license upon failure of the licensee to comply with a stipulation, consent order, or final order.
- Allows golf clubs to purchase and sell 50 milliliter or 1.7 ounce containers for consumption on the premises only.

If approved by the Governor, these provisions take effect July 1, 2000.

Vote: Senate 35-1; House 110-5

PROFESSIONS AND OCCUPATIONS

CS/SB 220 — Regulation of Professions

by Regulated Industries Committee and Senator Forman

The bill:

- Prevents the scheduled repeal of the Florida Engineers Management Corporation Act, preserving the corporation that provides administrative, investigative, and prosecutorial services to the Board of Professional Engineers; adds new duties; requires the corporation to pay specified expenses associated with the regulatory services; requires the corporation to develop performance standards and measurable outcomes; and establishes and phases in staggered terms for the corporation's Board of Directors.
- Requires the Office of Program Policy Analysis and Government Accountability, in consultation with the Legislative Committee on Intergovernmental Relations, to conduct a study of and make recommendations relating to public and private construction retainage methods.
- Requires professional engineers to sign, date, and seal final bid documents that are provided to an owner; defines "layout" for purposes of the fire prevention and control statutes.

- Increases the validity period for a provisional certification for a newly employed or promoted building code official to 3-5 years from the current period of 1-3 years.
- Allows a building code administrator who holds a limited or provisional certificate in any county with a population of less than 75,000 to provide direct supervision of a newly-employed person who has filed a provisional certificate application and is performing the duties of a plans examiner or building code inspector.
- Establishes special procedures for discipline of building code enforcement officials.
- Clarifies laws relating to certification and grandfathering of construction contractors and electrical and alarm system contractors; requires applicants desiring to obtain certification under the grandfather provisions to do so by November 1, 2004.
- Provides that a construction contract may require a party to indemnify another party for damages due to the negligence, recklessness, or intentional wrongful conduct of the indemnifying party only; deletes provision in current law that prohibits indemnity for acts of another party unless there is a monetary limitation on the extent of indemnification or consideration is provided.
- Provides that any proposed rule of the Electrical Contractors Licensing Board or any other non-medical board that is not modified to address an Administrative Procedures Committee objection must be approved by the Department of Business and Professional Regulation prior to filing with the Department of State for adoption. The Department of Business and Professional Regulation may repeal any such rule that takes effect without being modified.

If approved by the Governor, these provisions take effect July 1, 2000.

Vote: Senate 38-0; House 119-0

CS/SB 326 — Real Estate Brokers and Salespersons

by Regulated Industries Committee and Senator Saunders

The bill:

- Allows a real estate broker or salesperson, without having a signed release from the seller and without going through any of the statutory escrow dispute resolution procedures, to refund escrow funds to the purchaser of residential condominiums who validly rescind the purchase contract.
- Creates a requirement of and a form for a no brokerage relationship notice.
- Establishes exceptions for all real estate agency relationship disclosure requirements. These exceptions include situations where a licensee knows the potential seller where a buyer is represented by another licensee, or where an owner is selling new residential units built by the owner and the circumstances or setting should reasonably inform the potential seller or buyer that the owner's employee or single agent is acting on behalf of the owner. The bill also excepts from the disclosure requirements certain bona fide open house or model home showings, as well as responses to general factual questions from a potential buyer or seller.

- Clarifies that appraisal statutes do not apply to a real estate broker or salesperson who performs a comparative market analysis or gives an opinion of the value of real estate.

If approved by the Governor, these provisions take effect July 1, 2000.

Vote: Senate 38-0; House 114-0

CS/HB 405 — Public Accountancy

by Business Regulation and Consumer Affairs Committee, Rep. J. Miller and others
(CS/SB 688 by Regulated Industries Committee and Senator Sullivan)

The bill (Chapter 2000-114, L.O.F.) extends until October 1, 2005, the application deadline for a public accountancy license applicant with the requisite experience in another state or a foreign country to obtain a waiver of educational requirements. It also decreases from two-thirds to fifty-one percent the share of a partnership, corporation, or limited liability company that must be owned by certified public accountants for the business to engage in the practice of public accountancy. The bill prohibits a person who does not hold an active license in Florida from assuming or using any title or designation that tends to indicate that the person holds a license to practice public accounting under Florida law *or the laws of any other state, territory, or foreign jurisdiction*.

These provisions were approved by the Governor and take effect July 1, 2000.

Vote: Senate 34-0; House 115-0

CS/SB 1016 — Regulation of Professions under the Department of Business and Professional Regulation

by Regulated Industries Committee and Senator Sebesta

The bill continues or extends the license of anyone licensed under the medical practice act throughout the time the person is a member of the Legislature and for 60 days after leaving office, without the requirement of filing a notice or application for renewal. The active status license of such person will be renewed upon filing of a renewal application, including a fee of \$250 for each year the license was or will be in effect prior to the next biennial renewal date, documentation of 10 hours of continuing medical education credits per year, and certain other information expressly required by law.

The bill provides that whenever the pilotage rate review board orders a change in the pilotage rate and a party challenges the order, the change in the pilotage rate will go into effect upon the order of the rate board, with the difference between the old and new pilotage rate being placed in an escrow account. When administrative and court challenges have concluded, the money, including interest, goes to the prevailing party.

The bill provides that elevators are to be inspected by a third-party inspection service certified as a Qualified Elevator inspector or maintained pursuant to a service contract continuously in force. A statement verifying the maintenance contract must be filed with the division annually. All elevators must be inspected by a certificate-of-competency holder at least once every two years.

The bill authorizes the department to waive the payment of fees for up to two years for professions with sufficiently positive trust fund balances and projected fiscal stability. The bill also allows the Florida State Boxing Commission to borrow money from the Professional Regulation Trust Fund.

The bill creates the “Management Privatization Act,” authorizing the Department of Business and Professional Regulation, upon the request of a board, commission, or council, to contract with any business entity to perform support services. The bill establishes minimum content requirements for the contract and requires that the contract be approved by the requesting board, commission, or council before the department enters into it. The bill deems any contracting corporation to be an instrumentality of the state for the purposes of sovereign immunity. The corporation is to be funded by state funds appropriated from the Professional Regulation Trust Fund. If the corporation is no longer approved to operate or the board ceases to exist, all money and property held for the benefit of the board reverts to the department. The bill appropriates \$500,000 from the Professional Regulation Trust Fund to the department to pay the start-up costs of any private corporation or business entity to privatize licensing and investigative functions under the new Act.

The bill requires the Department of Business and Professional Regulation to make a recommendation to the Legislature by January 1, 2001, regarding whether persons should continue to be registered as direct disposers after June 30, 2001.

The bill requires engineers to complete 8 hours of professional development or continuing education every 2 years. Four hours must relate to general engineering requirements and 4 must relate to the licensee’s area of practice. The Board of Professional Engineers will adopt rules consistent with the guidelines of the National Council of Examiners for Engineering and Surveying for multi jurisdictional licensees.

The bill requires that the pilot or pilots in a port establish a competency-based mentor program, by which minority persons may acquire the skills for meeting the professional preparation and education competency requirements of a licensed pilot or certified deputy pilot. The department will provide an annual report on the number of minority persons participating in these programs.

The bill revises the definition of “body wrapping” to clarify that it is not for the purpose of weight loss.

The bill enhances administrative, criminal, and civil sanctions against athlete agents and others who participate in illegal inducement of student athletes. It makes it a second degree felony offense for a person to illegally induce a student athlete to enter into an athlete agency agreement, for a person who has been previously convicted or who has pled to illegal inducement to employ, use, or collaborate with another person to illegally recruit or solicit student athletes, or for a person to illegally recruit or solicit a student athlete by knowingly assisting someone who has been convicted of or has pled to illegal inducement, recruitment, or solicitation. The bill provides that a college or university that prevails in a civil suit against an athlete agent may recover treble damages, in addition to the currently recoverable actual and punitive damages.

If approved by the Governor, these provisions take effect July 1, 2000.

Vote: Senate 39-0; House 116-1

CS/HB 1083 — Professional Services Contracts

by Judiciary Committee and Rep. Bense (CS/SB 1996 by Regulated Industries Committee and Senator Clary)

The bill provides that a public agency no longer may require design professionals (architects, landscape architects, land surveyors, mappers, and engineers) to indemnify the agency for liabilities, damages, losses, and costs caused by the agency’s own negligence, recklessness, or intentional wrongful conduct in a professional services contract. A “professional services contract” is specifically defined in the bill. Under current law, a public agency may require a design professional to indemnify the agency if the contract contains either a monetary limitation on the extent of indemnification or specific consideration for indemnification.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 37-0; House 114-0

REAL PROPERTY AND CONDOMINIUMS

CS/SB 680 — Condominium Unit Unpaid Assessments

by Judiciary Committee and Senator Carlton

Current law provides that a condominium unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title, except that the liability of “a first mortgagee or its successor or assignee” who acquires title by foreclosure action is limited (s. 718.116(1), F.S.). The bill clarifies that in this provision, a “successor or assignee” includes only a subsequent holder of the first mortgage.

If approved by the Governor, these provisions take effect October 1, 2000.

Vote: Senate 38-0; House 116-0

CS/CS/HB 593 — Real Property

by General Government Appropriations Committee, Real Property and Probate Committee, Rep. Cantens and others (CS/SB 908 by Regulated Industries and Senator Webster)

The bill contains provisions relating to homeowners’ associations, condominiums, and timeshare and vacation plans.

Homeowners’ Associations

The bill provides that a homeowners’ association may not prohibit display of a United States flag.

Condominiums

The bill establishes specific requirements for multicondominium associations. “Multicondominium” is defined as a real estate development containing two or more condominiums, all of which are operated by the same condominium association. The bill establishes general requirements for multicondominiums and amends current laws to make provision for multicondominiums in the following areas: common expenses of multicondominium associations; developer liability for common expenses; amendments to condominium declarations; provision of financial report or financial statements to unit owners and the method of presentation of multicondominium receipts and expenses; making material alterations or substantial additions to the common elements of a condominium operated by a multicondominium association; and disclosures that must be made in a prospectus or offering circular if a condominium is or may become part of a multicondominium development.

The bill also amends laws pertaining to condominiums generally relating to: provision of financial report or financial statements to unit owners; appurtenances to each condominium unit; and unit owner payments for expenses of a master antenna television service.

Timeshare

The bill provides that all owners of timeshare estates in a cooperative unit are jointly and severally liable to the cooperative association for assessments and other charges assessed against the cooperative unit, unless the cooperative documents provide otherwise. It also includes in timeshare common expenses any past due and uncollected ad valorem taxes assessed against the timeshare development. This allows the unpaid taxes of an owner of a timeshare interest to be passed on as a common expense to the other timeshare owners.

The bill redefines the term “developer” in a way that exempts a successor or concurrent developer from liability inuring to a predecessor or concurrent developer of the same timeshare plan, unless the transfer of the developer’s interest was a fraudulent transfer. It also exempts from developer liability a person who has acquired or has the right to acquire more than seven timeshare interests from a developer or other interest holder in connection with a loan, securitization, conduit, or similar financing transaction and who subsequently arranges for all or a portion of the timeshare interests to be offered by one or more developers in the ordinary course of business .

The bill provides that if the developer makes changes in the public offering statement that materially alter or modify the offering in a manner adverse to the purchaser, the sales contract may be canceled. It is primarily the developer’s responsibility to determine if a change materially alters or modifies a public offering statement in a manner adverse to the purchaser. The bill also allows a developer to include in advertising materials facilities that have not been built, if the advertisement provides either the “estimated date that such facility will be made part of the timeshare plan” or the “date of promised completion,” as appropriate. These provisions are substantially similar to provisions in current law.

The bill provides procedures for an escrow agent to release unclaimed escrow funds that have been held for five years. The escrow agent must make at least one attempt to return the funds and is entitled to rely on the last known address. If unsuccessful, the escrow agent must publish a legal notice in the county in which the timeshare property is located. If the purchaser does not claim the funds within 30 days of publication, the escrow agent may deliver such unclaimed funds to the division for deposit in the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund, at which point the purchaser will have no further claim on the funds and the escrow agent is relieved from further liability.

The bill allows a timeshare managing entity in a floating reservation timeshare plan to deny the right to make a reservation of a timeshare period to any purchaser who is delinquent in the payment of assessments, if the managing entity gives notice to the purchaser of denial of use at least 30 days prior to the first day of the purchaser's use period.

The bill eliminates the requirement that a timeshare solicitor obtain a timeshare occupational license and pay a licensing fee, maintains the provision that a timeshare solicitor may be disciplined by the division, and adds a provision that makes a developer liable for actions of a timeshare solicitor under the direction or supervision of the developer. The bill authorizes county and municipal governments to adopt codes of conduct and regulations to govern solicitor conduct on public property, including providing for imposition of fines.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 34-0; House 118-0

UTILITIES

HB 2301 — Telecommunications

by Utilities and Communications Committee and Rep. Rojas (CS/SB 218 by Regulated Industries Committee)

Under current law, a local exchange telecommunications company is required to furnish basic telecommunications service within a reasonable time period to any person within the company's service territory. This is referred to as the company's "carrier-of-last-resort" obligation. This service obligation is set to expire on January 1, 2001. The bill extends the obligation until January 1, 2004. It also extends until January 1, 2004, the interim mechanism, under which the incumbent local phone companies must provide "universal service" to low income customers and customers who live in areas where the cost of providing service is high.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 39-0; House 111-0

